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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/536,258	03/27/2000	Gary L. Gastineau	11657-003001	3646

22930            7590            07/15/2005  
HOWREY LLP  
C/O IP DOCKETING DEPARTMENT  
2941 FAIRVIEW PARK DR, SUITE 200  
FALLS CHURCH, VA 22042-2924

EXAMINER
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CHARLES, DEBRA F

ART UNIT	PAPER NUMBER
	3624

DATE MAILED: 07/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/536,258	GASTINEAU ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Debra F. Charles	3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 March 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date: _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/21/2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

***Response to Arguments***

1. Applicant's arguments filed 3/21/2005 have been fully considered but they are not persuasive. Please see the explanation under the 112 rejection.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. The claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**The claim is indefinite because the scope of the**

**claimed design cannot be determined.** There are

differences in claim scope. The scope of receiving factor information is different from the scope of determining. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to recreate the invention **commensurate in**

**scope with these claims.** The examiner is offering a further explanation as per the 112 rejection. The wherein clause in claim 1 is at issue because the process of dynamic changing during the day time is not listed in claim 1. It is not clear why the computers and software are only part of the determining option and not part of the receiving option in the first step that refers to receiving or determining. From the wherein clause, it is not clear to the reader how the user's mental state affects the method's manipulative steps and this does not tell the reader anything about portfolio selection. The read then does not understand how the wherein clause contributes details to the invention's functionality. Further, the statement is very broad and does not exclude knowledge of the specific securities when selecting the hedged portfolio, the statement just excludes knowledge of the hedge's user who is further downstream from the creation claimed. Merely receiving factor information is different from in scope from determining. The factor analysis software is not positively cited in the claim. This leads the read to understand that all you would need is factor information source that reflects the funds' sensitivity. In addition, the claim does not cite the iterative dynamic computer changes that are germane to the invention.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lange (2002/0099640A1), Natarajan et al. (6584502B1), Gardner(6205439B1), Weiss et al. (5987435A), Lakshmi et al.(6108648A), and Mori et al.(6244986B1).

As per the specification, Lange discloses using economic statistical factors to hedge price movements of financial assets(para. 0415-0435). Further, Lakshmi et al. discloses a computer operated neural network that estimates values needed by an optimizer(hedging strategy) whereby the iterative dynamic computer changes invoke further changes in the computer output(Abstract). In addition, Weiss et al. disclose a proxy asset that provides sophisticated risk management and this mirrors hedging strategies in the applicant's specification(Abstract). Further, still Gardner

discloses computerized adjustments of simulation models based on inputs generated by outside forces and this mirrors the factor analysis of the applicant's invention(Abstract). Further yet, Natarajan et al. disclose new elements or changes in events that are analyzed by the policy analyzing engine of the computer system, the output is then feed back into the computer system to allow the computer to further adapt to changing conditions(Abstract). In addition, Mori et al. disclose a computer shifting the output to reflect changes in the input to re-align the computer system towards the target value(Abstract). It would be obvious to combine these inventions using artificial intelligence to analyze various factor inputs and then re-align the output hedging strategy to maintain a targeted total return. The reasoning behind this is analyzing computer inputs and incorporating the resulting computer outputs to dynamically shift or change the hedging strategy implemented on another computer. In effect, these references solve the same problem as the applicant's invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Debra F. Charles whose telephone

number is (571) 272 6791. The examiner can normally be reached on 9-5 Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent A. Millin can be reached on (571) 272 6747. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VINCENT MILLIN  
SUPERVISORY PATENT EXAMINER  
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Debra F. Charles  
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Art Unit 3624

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